

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

2017 JUN 15 A 9:29

NO. 16-CVS-9573

STATE OF NORTH CAROLINA, *ex rel.* WAKE CO., C.S.G.

JOSH STEIN, Attorney General BY)

Plaintiff,)

v.)

GORDON SCOTT HOPKINS, individually;)

CHARLES RAYMOND BERGEN, individually;)

PRO AUTOMOTIVE, LLC; and HOPKINS)

AND RAINES, INC.,)

Defendants.)

CONSENT JUDGMENT

THIS CAUSE came on to be heard and was heard before the undersigned Wake County Superior Court Judge for entry of a Consent Judgment between Plaintiff, State of North Carolina, by and through its Attorney General, and defendants Gordon Scott Hopkins, Charles Raymond Bergen, Pro Automotive, LLC ("Defendant Pro Automotive"), and Hopkins and Raines, Inc. ("Defendant HRI") (collectively "Defendants"). The Court finds that the parties have resolved the matters in controversy between them and have agreed to the entry of this Consent Judgment ("Consent Judgment") by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

I. FINDINGS OF FACT

1.1 Plaintiff State of North Carolina (hereinafter "Plaintiff" or "State") is acting through its Attorney General, Josh Stein, pursuant to authority granted in Chapters 75 and 114 of the North Carolina General Statutes to protect the consumer public from unlawful business practices.

1.2 Defendant HRI is a Texas corporation with its principal place of business located in Texarkana, Texas 75503.

1.3 Defendant Pro Automotive is an Indiana limited liability company, with a principal place of business in South Bend, Indiana 46634.

1.4 Defendant Gordon Scott Hopkins ("Defendant Hopkins") is an adult individual who, at all times relevant to this action, has been Defendant HRI's president and one of its owners. Defendant Hopkins is a resident of the state of Texas.

1.5 Defendant Charles Raymond Bergen ("Defendant Bergen") is an adult individual who, at all times relevant to this action, has been Defendant Pro Automotive's member manager. Defendant Bergen has been Defendant HRI's vice president, secretary, and treasurer, and one of its owners, since December 1, 2011. Defendant Bergen is a resident of the state of Indiana.

1.6 In 2010, Plaintiff received complaints from consumers about allegedly misleading direct mail promotions which were created by Defendant HRI and which had been mailed to consumers.

1.7 Subsequently, Defendant HRI and Plaintiff engaged in discussions, aimed at resolving Plaintiff's concerns about the above violations, which were concluded via Plaintiff's and Defendant HRI's execution of a written Settlement Agreement on February 21, 2011 (hereinafter "Settlement Agreement").

1.8 The Settlement Agreement prohibited Defendant HRI from engaging in commerce in the State of North Carolina.

1.9 The State alleges that Defendant HRI and Defendant Hopkins knowingly and intentionally breached the prior Settlement Agreement by further engaging in the same sort of

misleading advertisement that led to the Attorney General's review of Defendant HRI's business practices and the Settlement Agreement.

1.10 The State alleges that Defendant HRI consummated agreements with dealerships in North Carolina using the "Pro Automotive" name in order to conceal its violations of the Settlement Agreement with the State.

1.11 The State further alleges that Defendant HRI, Defendant Pro Automotive, Defendant Bergen, and Defendant Hopkins engaged in trade and commerce affecting consumers within the meaning of N.C. Gen. Stat. § 75-1.1, *et seq.*, by knowingly and intentionally developing, marketing, and selling promotional materials which did the following:

- a. created the false and misleading impression that the vehicles offered in conjunction with sale events are obtained from an outside source, are not part of the dealer's normal used car inventory, and are not usually available for purchase by the general public, in violation of N.C. Gen. Stat. § 75-1.1;
- b. created the false and misleading impression that vehicles offered in conjunction with the sale events are available to the public at a discounted price because of their origin, in violation of N.C. Gen. Stat. § 75-1.1;
- c. by including material terms in small print and related footnotes, created the false and misleading impression that vehicles may be purchased at a certain monthly payment amount, when such was not the case, in violation of N.C. Gen. Stat. § 75-1.1;
- d. by including material terms in smaller print and related footnotes, failed to adequately disclose that the ability to purchase a vehicle for the featured down payment and monthly payment amounts is dependent upon a number of factors

including the creditworthiness of the purchaser, their down payment, the term of the contract, and/or the APR, in violation of N.C. Gen. Stat. § 75-1.1;

- e. created the false and misleading impression that the consumer will receive a prize when such is not the case, in violation of N.C. Gen. Stat. § 75-32;
- f. represented directly or by implication that the recipient had a random chance to win one of a variety of prizes when it had already been determined by Defendants which prize the consumer would receive, in violation of N.C. Gen. Stat. § 75-33;
- g. created the false and misleading impression that the consumer had been specially selected when such was not the case, in violation of N.C. Gen. Stat. § 75-34; and
- h. included simulated checks in contravention of N.C. Gen. Stat. § 75-35.

1.12 Defendants deny the State's allegations, but are willing to agree to the entry of this Consent Judgment.

II. CONCLUSIONS OF LAW

2.1 This Court has jurisdiction over the parties and the subject matter of this action.

2.2 Venue is proper in Wake County, North Carolina.

2.3 North Carolina's Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, governs the alleged business practices of Defendants that gave rise to this controversy.

2.4 The North Carolina Attorney General is the proper party to commence these proceedings under the authority of N.C. Gen. Stat. §§ 75-14 and 15, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of North Carolina.

2.5 This Consent Judgment shall be governed by the laws of the State of North

Carolina.

2.6 Entry of this Consent Judgment is just and proper and in the public interest.

2.7 Plaintiff's Complaint states a cause of action against Defendants upon which relief may be granted, and the Court finds good and sufficient cause to adopt this agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for entry of this Consent Judgment.

2.8 The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties.

2.9 The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

III. PERMANENT INJUNCTIVE RELIEF

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

3.1 Except as expressly provided in Paragraph 3.2 below related to the individual defendants, Defendants HRI and Pro Automotive and their successors, assigns, transferees, officers, agents, servants, employees, salespersons, representatives and any person acting under the actual direction or control of Defendants HRI and Pro Automotive, are hereby permanently restrained and enjoined from engaging in "commerce" (as that term is defined in N.C. Gen. Stat. § 75-1.1(b)) in North Carolina.

3.2 Individual defendants, Bergen and Hopkins, and their successors, assigns, transferees, officers, agents, servants, employees, representatives and all other persons or entities in active concert or participation with Defendants are hereby permanently enjoined and restrained from creating or providing promotional advertising services, consultations or materials for automobile dealers of new and used motor vehicles in North Carolina, except that defendants Bergen and Hopkins, either individually or through any

entity, may provide printing services to third parties, including but not limited to automobile dealers in NC, so long as the printed materials comply with North Carolina consumer protection laws and further provided that defendant Bergen and Hopkins, either individually or through any entity, may not contract with, or print materials for, any entity that engages in staffed sales events.

3.3 Effective immediately upon execution by Defendants of this Consent Judgment, and for a subsequent period of five (5) years, Defendants Bergen and Hopkins agree to maintain records of all printing services and materials provided by Defendants Bergen and Hopkins, either individually or through a third party, to third parties and which were distributed, delivered, published, broadcasted or otherwise disseminated in the State of North Carolina. These records shall include a copy of the printed materials, shall identify the third party to whom the printing services and materials were provided, and shall identify the dates the services and materials were provided. Defendants shall, within ten (10) days of receipt of a written request by an authorized representative of the Attorney General's Office, produce a copy of the records Defendants Bergen and Hopkins are required to maintain under this provision.

IV. MONETARY RELIEF

IT IS FURTHER ORDERED that Defendants shall pay the sum of \$89,746.79 to the Attorney General to be used for attorney fees, investigative costs, consumer protection enforcement, other consumer protection purposes, and other purposes allowed by law, at the discretion of the Attorney General. Defendants shall pay the amount set forth above via a check payable to the "North Carolina Department of Justice" on or before July 12, 2017. Defendants acknowledge that a material part of the consideration for the Attorney General to enter into this Consent Judgment is based upon the spreadsheets, checks, and other financial information provided to the Attorney General's Office by Defendants prior to and including the day of the

mediated settlement conference on June 12, 2017. If, upon motion by Plaintiff, the Court finds Defendants failed to timely and fully disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial information provided by Defendants to the Attorney General's Office, such will deemed a material violation of this Consent Judgment and entitle the Plaintiff to seek appropriate relief from the Court.

V. GENERAL PROVISIONS

5.1 Other State Governmental Entities. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina and nothing in this Consent Judgment shall in any way preclude any investigation or enforcement under any legal authority granted to the State for transactions not subject to this action.

5.2 No Sanction of Business Practices. Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the North Carolina Attorney General has sanctioned, condoned, or approved any part or aspect of Defendants' business operations.

5.3 Regulation of Other Conduct. Nothing in this Consent Judgment is intended to relieve Defendants of their responsibility to comply with all applicable North Carolina laws.

5.4 Release of Claims. This Consent Judgment shall fully resolve all legal claims and issues raised in the Complaint by the Attorney General against Defendants for their activities up to the date of this Consent Judgment.

5.5 Joint and Several Liability. Defendants shall be jointly and severally liable for all amounts that are due and owed under this Consent Judgment.

5.6 Private Right of Action. Nothing in this Consent Judgment shall be construed to affect any private right of action that a consumer, person, or entity, or any local, state, federal or other governmental entity, may hold against the Defendants.


5.7 Retention of Jurisdiction. The Court retains jurisdiction over this action to take any further action deemed necessary to enforce this Consent Judgment, including imposition of penalties, and to award the State judgments for any costs, including attorney's fees, it incurs in the event of noncompliance by any of the defendants.

SO ORDERED, this the 14 day of June, 2017.




SUPERIOR COURT JUDGE

THE UNDERSIGNED PARTIES HEREBY CONSENT TO THE TERMS AND CONDITIONS OF THIS CONSENT JUDGMENT AS SET FORTH ABOVE, AND HEREBY CONSENT TO ENTRY THEREOF:




Gordon Scott Hopkins, Individually and in his capacity as an Owner and President of Hopkins and Raines, Inc.
Date: 6/12/2017



Charles Raymond Bergen, Individually and in his capacity as a Member and Manager of Pro Automotive, LLC
Date: 6-12-17

STATE OF NORTH CAROLINA,
ex rel. JOSH STEIN,
Attorney General

By: 

Assistant Attorney General, Torrey Dixon
Date: 6/12/17